

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.42b Selling or distributing tobacco products through U.S. mail service, express mail service, parcel post service, or common carrier prohibited; exceptions; violation as misdemeanor; penalty; definitions.

Sec. 42b. (1) Except as provided in subsection (3), a person shall not sell or distribute a tobacco product in this state through the use of the United States mail service, express mail service, parcel post service, or any common carrier service except to persons who have previously paid or agreed to pay for the products at fair market value. This subsection shall not be construed to apply to any person employed by the United States postal service or by any common carrier while carrying or delivering a tobacco product mailed or shipped by another person.

(2) A person shall not, as part of his, her, or its business, either directly or through an agent, distribute tobacco products to persons who did not previously pay or agree to pay for the products unless all of the following provisions are met:

(a) The person or agent distributing the tobacco product distributes only tobacco products regularly sold or manufactured by that person or agent.

(b) The person distributing the tobacco product ascertains that the person receiving the tobacco product is 18 years of age or older.

(c) The person receiving the tobacco product is physically present to receive the product.

(d) Distribution is not prohibited by any local ordinance.

(3) Subsection (1) does not prohibit the sale or distribution of a tobacco product in this state through the use of the United States mail service, express mail service, parcel post service, or any common carrier service if the sale or distribution is in response to a consumer complaint or is part of a direct mail marketing of products to specifically named individuals, and which response or marketing involves the prior return by the same specifically-named individual of an authorization card to the tobacco company that indicates that the individual is at least 18 years of age, is signed by the individual and is kept on file by the tobacco company for at least 1 year.

(4) A person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than \$10,000.00, or both.

(5) A person who violates subsection (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, a fine of not more than \$500.00, service to the community for not more than 180 days, or any combination thereof.

(6) As used in this section:

(a) "Employed" includes engaged as an agent or independent contractor.

(b) "Person" means an individual, partnership, corporation, association, or other legal entity.

(c) "Sell or distribute" includes sending or providing free samples or any other distribution not for sale.

History: Add. 1992, Act 273, Imd. Eff. Dec. 16, 1992.